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STATE OF IOWA



CITIZENS' AIDE/OMBUDSMAN

**REPORT TO GOVERNMENT OVERSIGHT COMMITTEE
REGARDING
SOIL AND WATER CONSERVATION DISTRICTS
COMPETITION WITH SMALL BUSINESS**

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Introduction

Competition by County Soil and Water Conservation Districts

At the request of the Government Oversight Committee, the Ombudsman gathered information regarding competition by county Soil and Water Conservation Districts (SWCD) with small business through the sale of products and services. The goal of the Ombudsman's review was to assist the Government Oversight Committee (Committee) in gaining an objective understanding of the issues so the Committee can ascertain whether there is a problem that requires legislation this legislative session.

The Ombudsman focused on gathering specific information from four SWCD offices in central Iowa; Dallas, Greene, Guthrie and Jasper. These offices were specifically identified in documentation presented to the Government Oversight Committee by affected small business owners (contractors), Jon Judson of Diversity Farms and Dan Brouse of Iowa Restorations. However, with 100 SWCDs in Iowa,¹ each with their own elected commissioners and each with different practices, priorities and fundraising activities, what the Ombudsman learned about these four counties may not be applicable to all the SWCDs in Iowa.

The Ombudsman assigned the case to the Assistant Citizens' Aide/Ombudsman for Small Business, Kristie Hirschman. For reference purposes in this report, actions taken by Ms. Hirschman will be ascribed to the Ombudsman.

Interviews

The Ombudsman visited the SWCD offices in Dallas, Greene, Guthrie and Jasper Counties on February 1. The Ombudsman also visited the Madison County SWCD office for comparison purposes.

In addition, the Ombudsman interviewed Jim Gillespie, Director of the Field Services Bureau within the Iowa Department of Agriculture and Land Stewardship's (IDALS) Division of Soil Conservation (DSC); Deb Ryan, Executive Director for Conservation Districts of Iowa; contractors; individuals who purchased services from these SWCDs; and staff at multiple SWCD offices in Iowa.

Compilation of Information

From the complaint information, the Ombudsman focused on whether the IDALS employees in four central-Iowa SWCDs, Dallas, Greene, Guthrie and Jasper, were assisting SWCDs in competing with private contractors in violation of Iowa Code Chapter 23A. This review included whether the IDALS employees directly assisted in furnishing products or services provided by the respective SWCD, as well as whether the SWCDs were in compliance with IDALS policy regarding district sales of products and services. The products and services

¹ Each district is organized by county boundaries with the exception of Pottawattamie County, which is divided into two districts, east and west.

offered by these four county SWCDs include drilling/seeding² services and the sale of seed.

In addition, the Ombudsman reviewed whether these four SWCDs were profiting at the expense of contractors by furnishing labor, machinery, seed and other materials financed in part with state and federal monies.

The information gathered by the Ombudsman and compiled in this document is divided into seven sections:

- 1) Agency Background Information
 - a) Division of Soil Conservation of the Iowa Department of Agriculture and Land Stewardship
 - b) Soil and Water Conservation Districts
 - c) USDA Service Centers
- 2) Funding Application Process
 - a) Federal Cost-Share Funding
 - b) State Cost-Share Funding
- 3) Services Offered by SWCDs to Cooperators³ and Authority to Compete
 - a) Dallas County SWCD
 - b) Greene County SWCD
 - c) Guthrie County SWCD
 - d) Jasper County SWCD
 - e) Other SWCDs
- 4) SWCD Secretary Involvement in the Sale of Services and Products
- 5) Compliance with Provisions of DSC Policy Regarding the Sale of Services and Products
- 6) Cooperators' Comments Regarding Their Decision to Utilize SWCD Services and Products
- 7) Are the SWCDs Profiting From the Sale of Products and Services?
 - a) State Funded Projects – IFIP, REAP and WSPF
 - b) Federally Funded Projects – CRP

Each section is followed by the findings and conclusions of the Ombudsman.

Due to the large number of acronyms used in this report, an alphabetical acronym guide sheet is included on the following page for your convenience.

² The terms “drilling” and “seeding” are interchangeable to the extent that they both involve the planting of seed. A drill is actually a specific piece of equipment used to plant seed. While the term “seeder” may be inclusive of a drill, there is also a specific piece of equipment known as a broadcast seeder. Broadcast seeders are not recommended for some types of seeding projects.

³ Persons utilizing the services and programs of SWCDs are referenced in this report as “cooperators”.

Acronym Guide Sheet

CDI – Conservation Districts of Iowa. CDI is a nonprofit 501(c) 3 organization devoted to providing educational programs on the conservation of soil, water, and other natural resources. Soil and Water Conservation Districts pay dues to CDI.

CRP – Conservation Reserve Program.

CREP – Conservation Reserve Enhancement Program.

CSP – Conservation Security Program.

DC – District Conservationist. The DC is an employee of the United States Department of Agriculture's Natural Resources Conservation Service.

DNR – Department of Natural Resources.

DSC – Division of Soil Conservation. DSC is a division of the Iowa Department of Agriculture and Land Stewardship.

EHC – Environmental Habitat Corporation. EHC is a non-profit corporation in Greene County.

EQIP – Environmental Quality Incentives Program.

FSA – Farm Services Agency. FSA is under the authority of the United States Department of Agriculture.

IDALS – Iowa Department of Agriculture and Land Stewardship.

IFIP – Iowan Financial Incentives Program.

LWPP – Local Water Protection Program.

NRCS – Natural Resources Conservation Service. NRCS is under the authority of the United States Department of Agriculture.

REAP – Resource Enhancement and Protection.

SWCD – Soil and Water Conservation Districts. There are 100 SWCDs in Iowa, one in each county with the exception of Pottawattamie County which is divided into east and west SWCDs.

SRF – State Revolving Fund.

USDA – United States Department of Agriculture.

WHIP – Wildlife Habitat Incentives Program.

WPF – Water Protection Fund.

WRP – Wetland Reserve Program.

WSPF – Watershed Protection Fund.

1) Agency Background Information

Iowa Code Chapter 161A, known and cited as the “*Soil Conservation Districts Law*”, governs the Division of Soil Conservation of the Iowa Department of Agriculture and Land Stewardship and Soil and Water Conservation Districts. Section 161A.2 specifically states the following:

161A.2 DECLARATION OF POLICY.

It is hereby declared to be the policy of the legislature to integrate the conservation of soil and water resources into the production of agricultural commodities to insure the long-term protection of the soil and water resources of the state of Iowa, and to encourage the development of farm management and agricultural practices that are consistent with the capability of the land to sustain agriculture, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state.

a) Division of Soil Conservation of the Iowa Department of Agriculture and Land Stewardship

According to the Division of Soil Conservation’s (DSC) webpage⁴:

The Division of Soil Conservation is responsible for state leadership in the protection and management of soil, water and mineral resources, assisting soil and water conservation districts and private landowners to meet their agricultural and environmental protection needs.

The DSC within the Iowa Department of Agriculture and Land Stewardship’s (IDALS)⁵ is “established within the department to perform the functions conferred upon it in chapters 161A through 161C, 161E, 161F, 207, and 208.”⁶ Some of the duties and powers of the DSC as it applies to the DSC’s relationship with the SWCDs are found in §161A.4 (4):

4. In addition to other duties and powers conferred upon the division of soil conservation, the division has the following duties and powers:
 - a. To offer assistance as appropriate to the commissioners of soil and water conservation districts in carrying out any of their powers and programs.
 - b. To take notice of each district's long-range resource conservation plan established under section 161A.7, in order to keep the commissioners of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
 - c. To coordinate the programs of the soil and water conservation districts so far as this may be done by advice and consultation.

⁴ <http://www.agriculture.state.ia.us/soilconservation.html> Accessed March 20, 2006

⁵ Actions taken by the DSC may be ascribed to IDALS in this report.

⁶ §161A.4(1)

- d. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.
- e. To disseminate information throughout the state concerning the activities and program of the soil and water conservation districts.
- f. To render financial aid and assistance to soil and water conservation districts for the purpose of carrying out the policy stated in this chapter.
- g. To assist each soil and water conservation district in developing a district soil and water resource conservation plan as provided under section 161A.7. The plan shall be developed according to rules adopted by the division to preserve and protect the public interest in the soil and water resources of this state for future generations and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control of and use of the soil and water resources of this state, by measures including, but not limited to, the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.
- h. To file the district soil and water resource conservation plans as part of a state soil and water resource conservation plan. The state plan shall contain on a statewide basis the information required for a district plan under this section.
- i. To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience of all other such districts and facilitate an interchange of advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts and provide other appropriate assistance to the districts.

In addition, §161A.4(5) requires the DSC, in consultation with the commissioners of the SWCDs, to “conduct a biennial review to survey the availability of private soil and water conservation control contractors in each district.” The DSC is required to post the findings of the review on its website.⁷

The DSC operates in accordance with policies established by the State Soil Conservation Committee and is divided into three bureaus; Field Services Bureau, Mines and Mineral Bureau and Water Resources Bureau. The Field Services Bureau oversees DSC’s statutory responsibilities related to Iowa’s SWCDs. Jim Gillespie is the Bureau Chief.

⁷ <http://www.agriculture.state.ia.us/swcdcontractors.htm> Accessed March 20, 2006

According to its website, Field Services Bureau programs include:

- Cooperative Soil Survey
- Cost Share
- Field Office Staff
- Iowa Buffer Initiative
- Local Water Protection Program
- No Interest Loans
- Water Quality Protection Practices
- Water Quality Protection Projects

Aside from the Cooperative Soil Survey, the balance of the programs listed above provide funding for conservation practices.⁸ Some of the applications for these programs are approved at the DSC level and some are approved by the local SWCD. All monies for conservation projects are paid by the DSC directly to the cooperator, regardless of whether the individual funding application is approved by the local SWCDs.

The DSC employs secretaries in each of the 100 SWCDs. Each SWCD is also served by one of three DSC field representatives. The DSC field representatives are directly responsible for supervising the state employees housed in SWCD offices, including the secretary, as well as providing assistance regarding state funds and other relevant issues.

b) Soil and Water Conservation Districts

Chapter 161A details the statutory authority for SWCDs.⁹ The 100 SWCDs are each governed by a board of five elected commissioners. These commissioners administer the state funded soil conservation and water quality programs in their respective counties. According to IDALS website:¹⁰

Each SWCD is unique in the resource conservation problems it addresses and the way it chooses to package and deliver programs to landowners, farm operators, and local communities. Types of program activities conducted by soil and water conservation districts with support from the Division of Soil Conservation and other partners include:

- Implementation of Iowa financial incentive programs
- Development of soil and water resource conservation plans
- Development and implementation of water quality protection projects
- Establishing soil loss limits
- Administering soil loss complaints
- Carrying out conservation education programs in schools
- Conducting demonstrations and field days

⁸ There are also three funding programs administered by the Water Resources Bureau within IDALS; the Conservation Reserve Enhancement Program (CREP), the Watershed Protection Program and Ag Drainage Well Closure Program.

⁹ The Iowa General Assembly passed enabling legislation in 1939 and the 48th General Assembly was responsible for the Conservation Districts law and establishment of the State Soil Conservation Committee.

¹⁰ <http://www.agriculture.state.ia.us/swcdistricts.htm> Accessed March 20, 2006

The state funded programs approved by the SWCD commissioners include, but are not limited to, State Cost Share (IFIP), Resource Enhancement and Protection (REAP), and Watershed Protection (WSPF). These three programs are the primary programs utilizing seed, drilling equipment and nursery stock.

As noted earlier, DSC employs secretaries in each of the 100 SWCDs. In addition, through a variety of funding sources, including the DSC's Buffer/District Initiative, SWCDs may employ one or more Soil Conservation Technicians.

Each SWCD also receives approximately \$2000 from IDALS to reimburse SWCD commissioners for administrative expenses, including, but not limited to, travel expenses, technical training and professional dues.¹¹ Program monies approved for federally or state funded conservation projects on private property are not deposited in SWCD accounts; the checks for these projects are made out to the cooperators by the federal government and/or the DSC.

The fifth paragraph of §161A.6 states the following regarding SWCD commissioners' financial responsibilities:

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall regularly report to the division a summary of financial information regarding moneys controlled by the commissioners, which are not audited by the state, according to rules adopted by the division.

According to the [SWCD] *Commissioner Handbook*¹², the SWCD commissioner holding the office of treasurer is required to submit a financial statement of all district funds, both state and local, in the SWCD's Annual Report to the public and to the DSC. In addition, the treasurer arranges "for a commissioner supervised annual audit of district funds, within 90 days after fiscal or calendar year end" and a copy of this annual audit is provided to the DSC.

A survey conducted by DSC in 2004 indicates that 68 of the 100 SWCDs provided one of the following services or products: drill/seeder, tree planter, mower, fabric check, seed,

¹¹ During the 2005 Legislative Session, three bills were enacted that appropriated monies to reimburse SWCD commissioners for administrative expenses. SF 71 was a supplemental appropriation for FY04-05 requiring IDALS to use \$250,000 from the Environment First Fund to reimburse commissioners. HF 808 appropriated the same amount for the same purpose for FY 05-06 but HF 882 reduced that amount by \$50,000. SF 2012 was subsequently introduced on January 10, 2006 and provides a supplemental appropriation of \$150,000 from the general fund to IDALS for FY 05-06. SF 2012 was not voted out of committee prior to the funnel deadline. HF 2540 was passed by the House Appropriation Committee on February 22, 2006 and includes an increase of \$50,000 (from \$200,000 to \$250,000) "[f]or purposes of reimbursing commissioners of soil and water conservation districts for administrative expenses including but not limited to travel expenses, technical training, and professional dues" for FY 07. As of March 8, HF 2540 was assigned to a Senate Appropriations Subcommittee.

¹² The *Commissioner Handbook* was written "in joint cooperation" by IDALS, DSC, NRCS and CDI. It is available on CDI's website at <http://www.cdiowa.org/resources.html>. Accessed March 20, 2006

SUMMARY AND RECOMMENDATIONS

The complexity of the funding programs and relationship between the FSA, NRCS, SWCD and DSC cannot be understated. Each has its own job responsibilities yet they cannot perform these duties without each other in many instances.

SWCDs receive no direct funding aside from approximately \$2000 (to reimburse expenses), a state-employed secretary and possibly a district soil technician paid for through a combination of funds, including the DSC's Buffer/District Initiative.

SWCDs are authorized by statute to sell products and services. The Ombudsman believes the SWCD secretaries can legally assist with the sale of products and services even though they have been advised not to do so by the DSC. Offering products and services for sale not only is a convenience for cooperators, but a source of revenue to support the SWCD conservation efforts and enhance attainment of sound conservation practices in the state. Not all SWCDs provide products or services; SWCD commissioners, locally elected officials, must approve doing so. Taking all these factors into consideration, the Ombudsman cannot conclude the sale of products and services by SWCDs is unreasonable.

The Ombudsman found that the four SWCDs which were the focus of review, Dallas, Greene, Guthrie and Jasper, are competing in widely varying degrees with contractors.

There is a perception by some of the cooperators interviewed by the Ombudsman that if the SWCD does the work, it will meet specifications. The Ombudsman found inherent advantages exist for SWCDs that choose to sell seed or services: the cooperators are neighbors and friends of the employees in these counties; the monies returned to the SWCDs (through the sale of services and products) potentially benefits these same cooperators; the convenience of conducting all aspects of the project in one office. The inherent and perceived advantages the SWCDs have in the sale of products and services may be difficult for a contractor to overcome, especially if the SWCD has already acquired a significant portion of the market as is the case with a couple of the SWCDs the Ombudsman reviewed. Regardless of these inherent advantages, the success of SWCD ventures, just like that of contractors, hinges on program participation and funding, quality work, dedication, and promotion.

With 100 SWCDs in Iowa, each with their own elected commissioners and each with different practices, priorities and fundraising activities, the Ombudsman's findings as they relate to these four counties may not be applicable to all the SWCDs in Iowa. For this reason, the Ombudsman cannot conclude that all SWCDs are profiting and/or have the largest share (due to inherent advantages) of the sale of services and products in their respective counties. It is also impossible to speculate whether the cost of implementing conservation practices would increase significantly if SWCDs were prohibited from providing services or selling products because of the numerous variables related to topography, voluntary cooperation and eligibility issues. The Ombudsman's research indicates that the practice of offering services and products for sale is not exclusive to

Iowa; SWCDs in neighboring states are also engaging in the sale of services and products.

Ultimately the decision to offer products and services for sale is made by locally elected SWCD commissioners. Change can take place at the local level or at the state level. The monetary investment made by some SWCDs and contractors means that either status quo or passage of

SF 180, (prohibiting SWCDs from providing services or products if the project is financed by state or federal monies¹), has the potential to adversely impact one or the other financially. Prohibiting SWCDs from selling services and products will not address competition from the creation and proliferation of non-profit groups offering the same services and products.

The Ombudsman recommends the following actions be taken to safeguard public monies and to bring SWCDs in compliance with existing laws.

If the General Assembly chooses to make no changes to SWCDs' statutory authority to compete:

- 1) The General Assembly should consider adding provisions in Chapter 11 of the Code of Iowa governing audits when the amount of gross revenue exceeds a specific amount. The Auditor of State should be consulted as to what level of income necessitates an audit on a regular basis. For example, Minnesota SWCDs are subject to audits under the oversight of the Office of the State Auditor. Most Minnesota districts are audited once every two years; the districts with smaller budgets are usually audited every four years.
- 2) The Dallas and Greene County SWCDs should address the violations of conflict of interest identified in this report by taking either course of action identified in §68B.2A(2).
- 3) After consultation with DOR, DSC should advise and consult with the SWCDs to bring them into compliance with Iowa's sales tax laws.

Regardless of whether any action is taken by the General Assembly to SWCDs' statutory authority to compete:

¹ Section 1. Section 161A.7, Code 2005, is amended by adding the following new subsection:
NEW SUBSECTION. 6A. The commissioners shall not furnish labor, machinery, seed or other plant materials, required to install a soil and water conservation practice or an erosion control practice, if the installation is financed by state or federal moneys, including but not limited to cost-share moneys and other financial incentives as provided in division V, part 2, of this chapter. The commissioners may provide a list of private contractors who are available to furnish such labor, machinery, seed or other plant materials, for landowners or occupiers within the district. This subsection shall not limit the commissioners from providing other assistance to landowners or occupiers as provided in this chapter, including planning or engineering services, or from making inspections of a practice being installed or after the practice is installed.

- 4) The SWCDs and state employees who work in those offices should ensure their policies and practices are in compliance with Iowa's Public Records Law (Chapter 22 of the Code of Iowa). They should obtain and utilize available resources that include:
- “Iowa Open Meetings, Open Records Handbook” published by the Iowa Freedom of Information Council² for staff and commissioners.
 - The Iowa Attorney General's bulletins called "Sunshine Advisories" that inform citizens and government officials about their rights and responsibilities regarding Iowa Open Meetings Law and Public Records Law. These bulletins are available at http://www.state.ia.us/government/ag/Sunshine_adv/sunshine.html.
 - “Public Records 101: Basic Training”, a videotape created by the Iowa State Association of Counties, the Citizens’ Aide/Ombudsman, and the Attorney General’s Office regarding Public Records Law. Copies are available from the Iowa State Association of Counties at 515-244-7181.
 - Consultation with available attorney or legal representative if question or doubt remains after considering other resources.

² <http://www.drake.edu/journalism/foi/ifoil.html> Accessed March 20, 2006